

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
THE LITTLE OIL COMPANY, INCORPORATED
UST Facility at 2900 West Main Street, Waynesboro, VA
Facility Identification No. 6-023371

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code " 62.1-44.15 (8a) and 8(d) between the State Water Control Board and The Little Oil Company, Inc. to resolve certain violations of the State Water Control Law and regulations at The Little Oil Company, Inc.'s Underground Storage Tank Facility located at 2900 West Main Street in Waynesboro, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **ABoard@** means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code " 10.1-1184 and 62.1-44.7.
2. **ACode@** means the Code of Virginia (1950), as amended.
3. **AUST@** means underground storage tank.
4. "Little Oil" means The Little Oil Company, Incorporated, the UST owner within the meaning of Virginia Code " 62.1-44.34:8.
5. **ADepartment@** or "DEQ" means the Department of Environmental Quality, an agency of the

Commonwealth of Virginia as described in Code ' 10.1-1183.

6. **ADirector@** means the Director of the Department of Environmental Quality.
7. **AFacility@** means the retail gasoline station and USTs owned and operated by Little Oil located at 2900 West Main Street, Waynesboro, Virginia. The Facility's USTs are further identified by UST numbers: 1, 2 & 3.
8. **AOrder@** means this document, also known as a Consent Special Order.
9. **ARegional Office@** means the Valley Regional Office of the Department.
10. **ARegulation@** means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "Sti-P3 tank" means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.
12. "Flex connector" means a short (less than 30 inches) piece of flexible piping, made of braided stainless steel, used to connect the submersible turbine pump to the main section of fiberglass product piping.
13. "Form 7530" means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-60, required that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Little Oil is the owner of the USTs at this Facility within the meaning of Virginia Code ' 62.1-44.34:8.
3. On January 30, 2002, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. Information reported on the facility's form 7530 regarding substances stored, capacities, release detection methods and the facility's 911 address, was incorrect. This is an apparent violation of 9 VAC 25-580-70 ¶ A.

- b. The piping associated with USTs #1, 2 & 3 had not been upgraded with cathodic protection in apparent violation of 9 VAC 25-580-60 ¶ 3.
- c. The observation wells next to the USTs were not secured in apparent violation of 9 VAC 25-580-160 ¶ 6. h.

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 02-01-VRO-020) to Little Oil on February 6, 2002, for these apparent violations of the Regulations. The letter requested that Little Oil respond by February 18, 2002, and included a copy of the formal inspection results, detailing the apparent violations noted above.

- 4. On March 13, 2000, the Department received an amended form 7530 from Little Oil correcting the erroneous UST information at the facility and documentation confirming that the observation wells had been secured. It also informed the DEQ that Little Oil was in the process of evaluating options to cathodically protect the sections of steel piping which are in contact with the ground and which routinely contain a regulated substance.
- 5. On April 15, 2002, DEQ staff sent a Letter of Agreement (LOA) to Little Oil which included a requirement to cathodically protect the sections of steel piping which are in contact with the ground and which routinely contain a regulated substance. The compliance deadline provided in the LOA was May 30, 2002. The LOA was not signed or returned to the DEQ.
- 6. On May 2, 2002, DEQ staff received an e-mail correspondence from Little Oil indicating its intention to install containment sumps around the submersible turbine pumps and flex connectors for all three USTs in order to remove them from contact with the ground.
- 7. On June 20, 2002, DEQ staff sent an e-mail correspondence to Little Oil requesting information on the status of the work being performed at the facility. DEQ also requested information regarding the LOA that was sent on April 15, 2002. No reply was received.
- 8. DEQ staff left voice-mail messages for Little Oil on July 15 & 30 and August 8 & 15, 2002. Each voice-mail requested a return telephone call and information regarding the status of the facility. In the August 15, 2002, voice-mail, DEQ advised Little Oil of our intention to issue a Notice of Violation (NOV) if the facility was not in compliance with the Regulation.
- 9. On August 9, 2002, DEQ staff issued a NOV No. 02-8-VRO-1 to Little Oil, for the apparent continuing violation of the Regulations 9 VAC 25-580-60 (UST upgrade

requirements) on USTs #1, 2 & 3. The NOV requested that Little Oil respond to the Department by August 19, 2002.

10. On August 16, 2002, Little Oil contacted DEQ staff via telephone to inform the DEQ of actions it was taking to correct the remaining alleged violation. At this time, Little Oil indicated that it had hired a contractor to remove the soil from around the submersible turbine pumps and flex connectors and install sleeves (round retaining walls) to prevent any further contact with the ground. Little Oil also requested that DEQ staff attend a site visit at the facility with the contractor on August 20, 2002.
11. On August 20, 2002, DEQ staff performed a site visit at the facility. Representatives were present from both Little Oil and its contractor. DEQ staff observed that backfill had been removed from around the submersible turbine pump and that the flex connectors were still buried in the backfill. Little Oil agreed to correct the situation by Friday, August 23, 2002.
12. On August 22, 2002, DEQ staff received an e-mail correspondence from Little Oil confirming that 36 inch plastic sleeves had been installed around submersible turbine pumps on all three USTs at the facility and that the flex connectors had been encased in flexible rubberized sleeves to prevent any contact with the backfill. Additionally, Little Oil had installed ball valves on the product lines to facilitate line testing in the future. This effectively resolves the outstanding violation for which the NOV was issued.
13. On August 29, 2002, DEQ staff met with representatives from Little Oil to discuss possible resolutions to this matter.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code ' ' 62.1-44.15 (8a) and (8d), orders Little Oil and Little Oil agrees that:

1. Little Oil shall pay a civil charge of \$644.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to ATreasurer of the Commonwealth of Virginia@ and delivered to:
Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240
2. Little Oil shall also include its Federal Identification Number with the civil charge

payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Little Oil, for good cause shown by Little Oil, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Little Oil admits the jurisdictional allegations in the Order.
4. Little Oil consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Little Oil declares it has received fair and due process under the Virginia Administrative Process Act, Code ' ' 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Little Oil to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Little Oil shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Little Oil must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Little Oil shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Little Oil intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Little Oil. Notwithstanding the foregoing, Little Oil agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Little Oil petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Little Oil has satisfied all the requirements of the Order is a ~~Acase decision~~ within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to Little Oil.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Little Oil from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Little Oil voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Little Oil:

Date: _____ By: _____
Robert C. Slovic
Title: President

Commonwealth of Virginia, City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by

Robert C. Slovic of Little Oil, a _____, on behalf of the corporation.
(title)

Date
My commission expires:

Notary Public